DOCUMENT RESUME

ED 417 166 SP 037 812

AUTHOR Williams, Shirley J.
TITLE Accommodating the Disabilities of Future Teachers: Impact of Section 504 and the American Disabilities Act and the Legal Responsibilities for Teacher Education Programs and Policy Development.
PUB DATE 1998-02-26
NOTE 34p.; Paper presented at the Annual Meeting of the American Association of Colleges for Teacher Education (50th, New Orleans, LA, February 26, 1998).
PUB TYPE Reports - Descriptive (141) -- Speeches/Meeting Papers (150)
EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Civil Rights; *College Students; Disability Discrimination; Educational Policy; Elementary Secondary Education; *Equal Education; Higher Education; Learning Disabilities; *Legal Responsibility; Preservice Teacher Education; *Teachers with Disabilities
IDENTIFIERS *Americans with Disabilities Act 1990

ABSTRACT

As increasing numbers of students with disabilities enter the country's teacher education programs, violations of their civil rights are on the increase. The Rehabilitation Act of 1973 prohibits discrimination against individuals with disabilities at institutions which receive federal funds. Section 504 of the Act requires educational programs to remove barriers to the success of individuals with disabilities in higher education, and it defines who is protected. The Americans with Disabilities Act of 1990 (ADA) extends further coverage by prohibiting discrimination against qualified individuals with disabilities by public and private institutions. Students who have currently disabling conditions are entitled to receive academic adjustments and auxiliary aids and services. Universities require documentation of disabling conditions by appropriate specialists before providing special accommodations. Accommodations fall into the categories of classroom, lecture, examination, assignment, and administrative accommodations. Teacher education programs and partnering school districts must examine how various disabling conditions affect the requirements of the profession at both preservice and inservice levels. There needs to be a clear policy and a reasonable set of entrance competencies for these situations. A sample document for student notification of class requirements, accommodation needs, expected behaviors, and criminal records is included. (Contains eight references.) (SM)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 417 166

Accommodating the Disabilities of Future Teachers:

Impact of Section 504 and the American Disabilities Act and the Legal Responsibilities for Teacher Education Programs and Policy Development

by

Shirley J. Williams, Ed.D.

Director of Teacher Education
University of St. Francis
500 Wilcox Street
Joliet, Illinois 60435

Telephone: 1-815-740-3377
Fax: 1-815-740-4285
swilliams @stfrancis.edu

American Association of Colleges of Teacher Education (AACTE)

50th Annual Meeting

New Orleans, Louisiana

February 26, 1998

BEST COPY AVAILABLE

S163781Z

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

S. Williams

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

Accommodating the Disabilities of Future Teachers: Impact of Section 504 and the Legal Responsibilities for Teacher Education Programs and Policy Development

The preparation of future teachers to comply with federal and state regulations governing Section 504 of the Rehabilitation Act of 1973, the American Disabilities Act (ADA) of 1990, and Individuals with Disabilities Education Act (IDEA) of 1992 has received increased attention in recent years. It is no longer necessary to rely on the power of persuasion to encourage institutions of higher education to meet the specialized needs of students with disabilities. While inclusion practices have necessitated that preservice teachers have greater understanding of practices and policy which govern the rights of elementary and secondary students with special needs, teacher educators are discovering that these same policies and regulations affect curriculum development, teaching strategies, and assessment practices in teacher education programs. Education faculties prepare future teachers for their legal responsibilities under four major pieces of legislation: PL 94-142 (the legislation regarding mainstreaming and individual education plans), PL 99-457 (which provides that each state provide a comprehensive system of services for children under the age of five), Section 504, and ADA. At the same time, however, teacher education faculties find themselves faced with the same concerns regarding their own students. This federal legislation is emerging as a major policy consideration for a growing number of students entering teacher education programs throughout the nation.

About 10.5 per cent of all college students have some disability. Nearly one in every 11 freshmen report they have a disability, compared with one in 38 in 1978 (1992). Nearly 40 per cent of those have some sort of visual impairment and about 26 per cent are deaf or hard of hearing. Those who represent the handicapped say

Shirley J. Williams, Ed. D., Director of Teacher Education
swilliams@stfrancis.edu
University of St. Francis, Joliet, Illinois
1-815-740-3377

that many more people with disabilities will enter higher education in the future because the new regulations will open up opportunities for them in the job market that previously were closed.

Yet violations of Civil Rights has increased as well. Since college is a gate-keeping function for employment in this country, it's a grave concern that there are so many violations and pending court cases. Such violations are reflected by the increased numbers of cases making it into the legal system. The following are just a sample of the types of cases coming before the courts in higher education:

- Wilkes Community College broke the law by having a policy barring nursing students with the AIDS virus or hepatitis from performing certain procedures on patients. Such students would then fail their program. Under an agreement with the department, the college changed its policy so that, in the future, any student would be evaluated on an individual basis with no presumption that he or she would be excluded. If the college determines that infected students would endanger patients by performing certain procedures, it can bar them from doing so, but they must provide another way to pass the course.
- Robert T. McGregor enrolled at the Louisiana State University Law in 1988, but twice failed to meet minimum grade point average requirements. He sued the university, saying that its refusal to allow him to enroll part-time was illegal discrimination based on his disabilities. Mr. McGregor suffers from pain and fatigue as a result of a series of accidents. A federal district judge ruled for the university, and a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit upheld that decision. Mr. McGregor argued that part-time enrollment was reasonable because other accredited law

schools offer that option. But the appeals court said the full-time requirement was "an academic decision" that the university was entitled to make. The court called LSU's policies "strict," but said that there was no evidence of "malice" or "ill-will", so the policy is legal.

- An Ohio appeals court has overturned a judge's order that Case Western Reserve University admit a blind woman to its medical school. The accommodations required to graduate her CWRU would not only be unfairly burdensome, but would leave her with far less than the full medical experience required of its graduates. Courts, he said, should recognize the differences between medical education and other degree programs -- something he said the appeals court had done, but the lower Ohio court had not. Medicine is distinguished from other academic pursuits in that it leads to a professional degree that involves the health and safety of others, and is not purely to the personal benefit of the person being educated.

Regardless of the case outcomes, issues surrounding federal legislation for the disabled are increasingly filling up .court time, while causing faculties and administrators in institutions to run scared.

Overview of Legislation

The Rehabilitation Act of 1973 prohibits discrimination against the handicapped at institutions which receive or benefit from federal funds. Section 504 of the Act, which took effect in 1977, requires educational programs to remove barriers which could prevent individuals with disabilities from participating in higher education and provides that no otherwise qualified individual with a disability shall, solely by reason of her or his disability, be excluded from

BEST COPY AVAILABLE

participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Section 504 obligates public and private institutions receiving federal funds not to discriminate against qualified individuals with a disability.

The American Disabilities Act of 1990 (ADA), while modeled on the Rehabilitation Act of 1973, extends further coverage by prohibiting discrimination against qualified individuals with a disability by both public and private institutions under the public services and accommodations sections of the Act. The rights of the handicapped are a matter of law, and these laws now give advocates of students with disabilities a legal tool to ensure meaningful participation of students, and the necessary supports to provide for students attending institutions of higher learning. Since ADA is a Civil Rights Act, lawsuits, not merely complaints, can be taken directly to the federal courts (1991) (Kincaid, 1994). One key difference between the laws is that under Section 504, people must bring complaints to federal agencies for investigation. Under ADA, people can sue institutions directly. Most courts recognize that any aggrieved student, employee, or other person using the services of a public institution not only can file a private lawsuit under ADA but has the right to a jury trial. Winning plaintiffs may be able to collect unlimited compensatory damages for emotional distress and having their civil rights violated, among other injuries. It is also possible that an institution may be ordered to pay punitive damages and attorney's fees, and the powers of the courts could result in a judge's order to place a freeze on new capital construction until existing facilities are made accessible.

The Department of Education and the Department of Health and Human Services have enacted regulations designed to implement Section 504 as it applies to postsecondary education. Both sets of regulations state generally that a college or university, any part of which is extended federal financial assistance, may not directly or through contractual licensing, financial assistance, or other arrangements, deny any qualified person with a disability the opportunity to participate in or benefit from the services provided by the institution. The Department of Education plays a role in enforcing Section 504 and ADA.

Section 504 specifically prohibits a postsecondary institution from making inquiries to determine whether an individual has a disability. The regulations of Section 504 also bar asking applicants about disabilities, including questions related to how they see disabilities affecting their ability to perform a given job as related to any limitations of their disability.

Private colleges are not immune. Although private colleges were required to write and implement transition plans by 1980, they were not required under ADA to do new surveys, nor were new deadlines imposed on them. Yet their risk of liability is the same under *Franklin v. Gwinnett County Public Schools* (Kincaid, 1994). Recent interpretations of Section 504 in the courts have held that individuals can file private suits and seek the same damages from private colleges as they can from public colleges. Failure to develop transition plans and self-evaluations have left many institutions out of compliance due to widespread misunderstanding about the law.

Shirley J. Williams, Ed. D., Director of Teacher Education
swilliams@stfrancis.edu
University of St. Francis, Joliet, Illinois
1-815-740-3377

Compliance Concerns. Complying with the law may not be nearly as expensive as some institutions have estimated. In many cases, institutions have ignored less-expensive alternatives. ADA does not mandate that every existing building, or even part of every building, has to be renovated. New construction has to meet a strict set of requirements, but older buildings do not have to be completely accessible to people with disabilities.

> *The law requires access to all educational programs and services, not to every building.*

Broad discretion is given to institutions to make programs accessible through other means, the most obvious being to relocate classes or events to accessible locations (Duston & Provan, 1995).

Financial burden is not automatically a legitimate defense for non-compliance. An institution is required to take into account all of the resources available to it, and in some cases, the resources of multicampus university systems. Judges or juries might look at an institution's entire budget and question how its money has been spent since both laws took effect. Unfunded federal mandates have been around for a long time, and Congress is not likely to change its expectation to meet them despite financial concerns (Duston & Provan, 1995).

Definition: Who is Protected?

According to Section 504, the definition of "an individual with a disability" :

- has a physical or mental impairment, which substantially limits one or more major life activities;
- has a record of such impairment; or

BEST COPY AVAILABLE

- is regarded as having such an impairment.

To determine if a student is qualified with a disability, "major life activities" are defined as: caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The definition of disabilities and handicaps has been broadened under the Vocational Rehabilitation Act to include any physical or mental impairment which includes a broad range of physiological disorders or conditions, cosmetic disfigurements, or anatomical losses affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine. It also includes mental or psychological disorders, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. ADA regulations go on to include specifically contagious and non-contagious diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, hepatitis, HIV disease, tuberculosis, drug addiction and alcoholism.

It is important to note that special education students who are classified as disabled under Public Law 94-142 are disabled persons under Section 504, but students who are disabled under Section 504 are not necessarily disabled under Public Law 94-142, that is classified as special education. Students with medical conditions such juvenile rheumatoid arthritis, chronic asthmas, severe allergies, diabetes, heart disease, epilepsy, and sickle cell anemia are included under Section 504 as well as physically disabled students who may not be in special education programs such as students with cerebral palsy or students who need catheterization services.

Drug Addiction Or Alcoholism. "Individuals with handicaps" does not include individuals currently engaged in the illegal use of drugs, but it does include former users or individuals who have completed drug rehabilitation programs and are no longer engaged in the illegal use of drugs. However, local educational agencies are free to discipline persons who are engaging in the illegal use of drugs or the use of alcohol, even if they are handicapped by conditions other than drug addiction or alcoholism. Section 504 regulations do not contain any direct reference to the school's right to enforce disciplinary rules in regard to current drug or alcohol users.

> *Unlike students attending elementary and high schools, a post secondary institution may expect all students to conform their behavior to meet conduct codes* (Kincaid, 1994).

Great concern surrounds the question of what effect "the inclusion of drug addicts and alcoholics as handicapped persons would have on school disciplinary rules prohibiting the use or possession of drugs or alcohol by students." Neither such rules nor their application to drug addicts or alcoholics is prohibited by this regulation, provided that the rules are enforced evenly with respect to all students (34 C.F.R. Part 104, p. 387.) Possession of illegal drugs or alcohol <u>without evidence of the use of drugs of alcohol</u> would not remove Section 504 procedural safeguards. Public agencies should be aware that students who are eligible for special education and related services pursuant to the Education for All Handicapped Act (EHA) or Individuals with Disabilities Education Act (IDEA) have additional protections,

including due process procedures which must be followed even though the student may be a user of drugs or alcohol (Hopko, 1992).

Section 504's definition of an individual with a handicap is amended as to employment to exclude an individual whose currently contagious or disease or infection would constitute a direct threat to the health or safety of other individuals, or by reason of the currently contagious disease or infection is unable to perform the duties of the job. Employment could include clinical settings such as hospitals or student teaching experiences in schools even though a student is not being paid.

It is the direct threat to the health or safety of others which is key in determining the ability to perform duties of the job.

Impairment of Life Activity

There are three factors which determine if a person's impairment substantially limits a major life activity:

- its nature and severity;
- how long the impairment is expected to last; and
- its permanent or long-term impact, or expected impact.

A qualified student with disabilities has a record of such impairment; that is, has a history of, or has been misclassified as having mental or physical impairment. Is regarded as having an impairment means the student:

- has a physical or mental impairment not substantially limiting, but is regarded by recipient as constituting a limitation;
- has physical or mental impairment that is substantially limiting only as result of attitudes of others toward such an impairment; or

BEST COPY AVAILABLE

Shirley J. Williams, Ed. D., Director of Teacher Education
swilliams@stfrancis.edu
University of St. Francis, Joliet, Illinois
1-815-740-3377

- has none of the impairments defined, but is treated by recipient as having an impairment.

Psychological Impairments. Persons diagnosed with various emotional conditions, including psychological disorders are protected by Section 504 and the ADA if their condition substantially limits a major life activity (Kincaid, 1994). Learning is listed within both Acts' regulations as a major life activity. Individuals who meet these requirements are entitled to: a) be free from discrimination; and b) receive reasonable accommodations to enable them to enjoy an equal opportunity to participate in all aspects of college life. Individuals who have a record of having such a disability are protected from discrimination on the basis of that record. Finally, individuals who are regarded as having a disability that substantially limits a major life activity, but who in fact either have no disability or have a disability that is not substantially limiting, are protected from discrimination because of this misperception.

Section 504 specifies that an individual with a disability is considered otherwise qualified if s/he meets the technical and academic standards requisite for admission into the institution's program.

Disclosure by Student

Whether or not an individual should disclose the existence of a disability in order to enhance one's admission into a program is a judgment call which the consumer must make, after considering all the institution's requirements for admission (Kincaid, 1994). Therefore a qualified student with a record of impairment whose impairment could be regarded as interfering with one's ability to

BEST COPY AVAILABLE

carry out responsibilities of teaching, cannot be asked questions regarding his/her ability to do so. In Tips v. Regents of Texas Tech University, 8 NDLR¶ 48 (N.D. Tex. 1996) a federal court in Texas was called upon to determine a graduate student's "inability to conceptually organize material" and concluded that the student's condition did not constitute a disability as defined by Section 504 and the ADA. The student "failed to identify her problem nor seek accommodations until after she failed to pass all four parts of her comprehensive exams, resulting in her dismissal from the program...." According to ADA discriminate means the failure to make reasonable accommodations to the known limitations of an otherwise qualified individual with a disability. In the employment context of this case, the employee has an obligation to notify her employer that she has a disability if she wishes accommodations, therefore the decision was made based on the history of the legislation which determined that the duty to accommodate is triggered by a request from an employee (Kincaid, 1996).

Institutions may inquire about a person's disability after admission to ensure that it provides the student necessary accommodations.

It is important that students understand that an institution is only required to provide accommodations to the known disabilities of a student, and the student must identify him/herself to the appropriate person(s) on campus if the student needs accommodations or auxiliary aids and services.

The student maintains the right to limit disclosure to only those professors that need to know. For instance, if a student has a condition which only affects

performance in one or two specific classes, it is not necessary for the information to be made available to all faculty. It would be improper for the institution to disclose information to other faculty and staff to whom the student has not authorized such disclosure. However, should students limit disclosure, they take the risk of not receiving accommodations they might otherwise be entitled to receive (Kincaid, 1994).

The Section 504 coordinator's function is to ensure that students with disabilities receive necessary services and are free from discrimination. Current documentation should suggest what kinds of accommodations the student is likely to need in order to participate effectively (Kincaid, 1994). In a University of Colorado Health Sciences Center, Case No. 08-94-2090 (OCR Region VIII) (1995), a student challenged her dismissal from the university on the grounds that the institution failed to accommodate her disabilities of vertigo and major depression. OCR stated that a person will not be considered to be substantially limited if she is limited in performing only *specialized activities.* Substantially limited is not defined by either Section 504 or ADA. It is *not the name* of an impairment or condition that determines whether a person is protected by Section 504 and the ADA according to the OCR, but rather the *effect* of an impairment or condition on the life of a particular person (Kincaid, 1996).

Accommodations

Because of the law and increased enrollment of students with disabilities, colleges and universities now routinely offer interpreters, note takers, and readers for students requiring such aides, and have installed elevators, wheelchair ramps, and sloped curbs on streets to allow the handicapped to move about campuses freely. Many also have made special arrangements to allow the disabled to use computers. Other common accommodation concerns include:

- Arranging for teachers to provide additional time on a test, allowing student untimed tests or providing note-takers which accompany the student to class to take lecture notes.
- Providing a separate room to provide a distraction-free environment during tests or allowing oral exams.
- Audio taping material for students who have difficulty reading and may need to listen to their work on a tape or have someone read to them.
- Giving the handicapped better access to campus computers and other technology.

Eligibility for Accommodations

Only those students who have a currently disabling condition are entitled to receive academic adjustments and auxiliary aids and services. This is intended to equalize the playing field for the student by determining what kinds of accommodations should be provided. An institution must provide requested accommodations that are reasonable in nature, do not give the student an unfair advantage, do not fundamentally alter the nature of the course and which do not place an undue financial or administrative burden upon the institution. Although the student must request the necessary accommodations, the institution must demonstrate that such accommodations are effective, and the institution need only provide those which result in effective participation – not everything or anything the student requests. The institution is not required, to provide services of a personal nature.

BEST COPY AVAILABLE

Shirley J. Williams, Ed. D., Director of Teacher Education
swilliams@stfrancis.edu
University of St. Francis, Joliet, Illinois
1-815-740-3377

Tutorial assistance is a service of a personal nature and is not required by Section 504 or the ADA. The institution need only provide tutorial assistance to the same extent it is provided to nondisabled students (Kincaid, 1994).

The Need for Documentation and Procedures

The university, like other schools, requires documentation of a learning disability by a health care specialist, psychologist, or diagnostic testing service before a student may receive special accommodations. Some universities provide diagnostic testing for students who have not been previously tested or classified. University officials are seeing a rise in the number of diagnosed students. Federal legislation, such as IDEA and ADA, has undoubtedly been responsible for some of the increase. Another cause is the growing number of students who were taken out of special classes and mainstreamed in the 1970s. Students who may not have thought of college before are now seeing it as an option. Expectations for students with disabilities are higher than they used to be, because the 1970s mainstreaming movement exposed them at an early age to the same curriculum as their peers.

Some universities such as East Tennessee State are committed to providing opportunities and challenges for all academically qualified students and have established an Office for Students with Disabilities to assist students in a number of supplemental support services. The policy (5.12) in the East Tennessee State University faculty handbook states:

East Tennessee State University is an equal opportunity institution that admits students without regard to disabling condition(s). The university is committed to providing opportunities and challenges for all academically qualified students. The Division of Student Affairs has established the Office of Students with Disabilities to assist students with disabilities in a number of supplemental support services.

Procedures have been developed to assist faculty when students with disabilities request academic accommodations. Faculty are to refer students with self-identified disabilities to the Director, Office for Students with Disabilities (OSD). In accordance with the Americans with Disabilities Act of 1973 (Section 504), students with disabilities who request academic accommodations, must self-identify and present professional documentation of a disability to the OSD. Professional documentation may include medical records, diagnostic information, psycho-educational evaluations, and other disability specific professional verification.

If it is determined the student has a disability, the director will evaluate academic options based on the diagnostic information, as well as reasonableness as defined in the ADA and Section 504. In certain and appropriate circumstances, the director and faculty member may discuss academic accommodations.

If a student has self-identified and provided the director with appropriate documentation, a Faculty Accommodations Form will be sent to the faculty member stating the types of accommodations to be used in the class and academic assignments. Faculty should not provide accommodations based on disabilities without the Faculty Accommodations Form. On occasion the director may have initial discussions with a faculty member, or administrator, to arrange accommodations for a student prior to the receipt of written medical records and/or Faculty Accommodations Form. All correspondence and information related to disabilities is confidential and requires a release signed by the student before forms and information are provided to appropriate faculty members (Senate, 1998).

In accordance with ADA, students with disabilities must self-identify and present professional documentation of a disability.

The Office of Civil Rights (OCR) upheld a college's refusal to grant a student's request for an accommodation which was not specifically recommended by the student's documentation in the case against Cumberland Community College (NJ), 6 NDLR ¶ 418, Case No. 02-94-2060 (OCR Region II) (1994); (Kincaid, 1996). In addition, Virginia Commonwealth University, Case No. 03-94-2099 (OCR Region III) (1995) ruled in favor of the institution that students with a learning disability submit a psychological and/or educational evaluation and meet other criteria for eligibility of services. OCR rejected the student's contention that the university is obligated to conduct such evaluation (Kincaid, 1996).

Growing Needs in Teacher Education Programs

A number of factors are changing the demographics of those individuals who choose to enter teaching as a profession. There are students who see teaching as a career change option. Often such change is due to injury or some other inability to continue in a first career. Increased numbers of students are receiving vocational rehabilitation services and see teaching as an option in such career changes -- the "those who can't, teach" syndrome. In addition, there are a number of traditional age college students with learning disabilities who see that teaching may be a reasonable profession.

People who have come through primary and secondary school receiving accommodations come to college expecting those same accommodations, and they have become knowledgeable and savvy about exercising their rights. Students who are disabled under Public Law 94-142 are disabled persons under Section 504, however, there are a large number of individuals who are disabled under Section 504 who are not necessarily disabled under Public Law 94-142. This fact is complicating the range of services and accommodations which must be provided for students from kindergarten through graduate school.

BEST COPY AVAILABLE

Shirley J. Williams, Ed. D., Director of Teacher Education
swilliams@stfrancis.edu
University of St. Francis, Joliet, Illinois
1-815-740-3377

One major guideline governing accommodations is that they cannot be such that the student is depending on analysis or judgment by another person. This can be especially important in programs requiring professional judgment and decision making. A federal appeals court has ruled that disabled students are not necessarily entitled to enroll part-time -- even if that would help them succeed in classes. The history of accommodations is also of consideration in determining the types of services to be provided. In the case of Northwestern College (IL), Case No. 05-94-2197 (OCR Region V) (1995) determined that oral testing was not an academic adjustment that had been used by the student in academic settings prior to his enrollment at the college, therefore it was not an acceptable accommodation (Kincaid, 1996). However,(Kincaid, 1996) there could be new accommodations identified as the result of course requirements or skills not previously necessary in coursework.

Accommodations are generally falling into one of five different categories: classroom, lecture, examination, assignments, and administrative. Examples of each can be seen in the following lists:

Classroom Accommodations:

Preferential seating to accommodate various types of needs for hearing, vision, access, least distractions, etc.)

Accompanier

Assigned classmate as volunteer assistant

Beverages permitted in class

Lecture Accommodations:

Pre-arranged breaks

Tape recorder

Notetaker

BEST COPY AVAILABLE

Shirley J. Williams, Ed. D., Director of Teacher Education
swilliams@stfrancis.edu
University of St. Francis, Joliet, Illinois
1-815-740-3377

Photocopy of another's notes

Examination Accommodations

Change in test format (e.g. From multiple choice to essay)

Permit use of computer software programs or other technological assistance

Permit exams to be read orally, dictated, scribed or typed

Extend time

Permit exams to be individually proctored, including in the hospital

Segment or divide examinations into shorter ones

Provide nondistracting, quiet setting

Increase frequency of tests or examinations

Assignments Accommodations:

Substitute assignments

Advance notice of assignments

Delay in assignment due dates

Provide opportunity for handwritten rather than typed papers

Assign assistance during hospitalization

Use alternative forms for students to demonstrate course mastery

Provide textbooks on tape

Administrative Accommodations:

Provide modifications, substitutions, or waivers of courses, major field of study, or degree requirements on a case-by-case basis (unless the changes requested would substantially alter essential elements of the course of program, or if courses are required for licensure)

Provide orientation to campus and administrative procedures

Provide assistance with registration/financial aid

Flexibility in determining "full time" status (for purposes of financial aid and health insurance)

Assistance with selecting classes and courseload

Parking passes

Elevator key

Incompletes rather than failure or withdrawals if relapse occurs

Identified place to meet on campus that feels "safe" before or after class

Courts have generally held that institutions must make "reasonable," but not "fundamental," changes in academic programs. In addition, it has been ruled that an exemption is not a reasonable accommodation.

Of tremendous importance is the ADA's coverage of testing and licensing authorities, such as the Educational Testing Service (ETS). Title III of ADA requires that such entities modify their examinations and provide necessary adjustments and aids to ensure that the examination measures the candidate's skills as opposed to his/her disability, unless the purpose of the test is designed to measure such skills. Accommodations such as extended exam time, a distraction-free environment, additional breaks, and in some cases, testing by an alternative format, are those which are used if warranted by the candidate's disability (Kincaid, 1994). In the case of Educational Testing Service, Case No. 02-94-2076 (OCR Region II) (1995), ETS agreed not to place a limit on the additional time available to individuals with disabilities taking the GRE and will consider each request on a case-by-case basis (Kincaid, 1996).

Students and Accommodations:

The following student profiles represent cases which this author has encountered over the past three years in two different teacher education programs. The cases reflect individuals who have made their needs either an ADA or a Section 504 issue with the university. They do not reflect the increasing number of students yet have been interviewed or enrolled who have not formally made such issues known to faculty or administration.

- Kim is a 22 year old, very obese woman majoring in mathematics, who is always seen breathing heavily after she arrives in class. After the semester begins, she starts her field experience in a junior high school. The first day the school secretary calls the university because the student teacher arrives at school pulling an oxygen tank on a cart. It turns out she has severe asthma, but didn't say anything because she did not want faculty to prejudge her abilities to teach.

The junior high is concerned about liability of having a student teacher in the school who could become seriously ill, get injured and scare the students. They criticized the university for not making the condition known, for they would not have accepted the student. The supervisor says that the student teacher does not display effective behaviors when teaching because of her gasping and difficulty in explaining concepts clearly. The student's university advisor tries to talk her into a different profession.

> *The student's oxygen is an allowable accommodation, unless the tank provides a safety risk in the school. If the breathing behaviors interfere with clear explanations or ability to keep class moving in a timely manner, the student teacher could be removed as unable to keep up with the requirements of the job. If the university had known about the condition, they could not disclose the information without*

BEST COPY AVAILABLE

permission. The advisor cannot question her about her perceived abilities to fulfill the duties of teaching based on her physical needs.

- Terry is a 33 year old male who is majoring in elementary education. He was in an industrial accident which caused spine and leg injuries which caused muscle and nerve damage. He is in constant pain and by the end of the day he is in such pain that he has to rest for 3 hours after school in bed.

He has difficulty getting assignments prepared for the course he is taking concurrently with student teaching and has asked to have due dates on his assignments moved to later dates in the semester. He is also having difficulty keeping up with the planning, grading papers, and other paperwork requirements of the cooperating school in the student teaching experience.

He can have extensions on university assignments as provided by previous accommodation plans. However, the work of the student teaching experience must be kept up as required by school policy or procedures.

- Robert is a 37 year old male who changed from a major in Mechanical Engineering to Mathematics Education with secondary certification. He was born without arms and has a single finger-like projections where the arms should have developed. He uses his feet to perform many tasks such as steering a car or opening and closing his book bag. He has the well-developed skill to write with his toes or hold his pen in his mouth and stabilize it with his one finger as he writes.

During student teaching he has asked not to have the four preps that other teachers in the school have because of the amount of time it takes him to prepare for each class. He especially resists geometry because of the amount of drawing for preparation. Also he would like extended time between classes. He takes criticism poorly from his cooperating teacher and supervisor. When he is asked to find other ways to hand out materials and collect papers because it takes up too much class time, he accuses them of expecting him to do things that he cannot.

Shirley J. Williams, Ed. D., Director of Teacher Education
swilliams@stfrancis.edu
University of St. Francis, Joliet, Illinois
1-815-740-3377

His number of preparations must be in line with what is expected in the program, and geometry is a basic requirement of a secondary math teacher. He can be required to set up system to expedite materials handling in class. The school accommodated him for extra time between classes because five minutes was not enough bathroom time for his physical needs.

- Jean is a 45-year old female who is an elementary education preservice teacher. She has a condition known as Repetitive Strain Injury (RSI) which has caused a disabling numbness and pain in both of her hands and arms to the point at which she is often unable to carry out many fine and gross motor functions. Tension and stress can exacerbate the condition, cause muscles to cramp, shoulders to hunch, and her neck to get knotted. She must often take medication for extreme pain, which makes her unable to function fully.

For classes Jean has asked for tape recordings of class lectures, 2 1/2 times the usual testing period for exams, and in-class assignments. Sometimes she would like to have an exam given in two parts because she cannot sit for extended periods of time. She needs a note taker and a scribe for her exams or may need to be able to give the answers orally. For student teaching there may be times that she cannot do cutting and writing with the first grade students. She often has difficulty writing on the board or easel paper.

The accommodations for university classes (notetaking extended time for exams) was permissable. She must be able to carry out the responsibilities of class. Cutting and writing assistance for advance preparation for classes is a personal need she sought. The university does not have to provide personal services.

- James is a 28-year old African American male who wants to be a high school history teacher. He is very soft spoken and pleasant, and is under care with a psychologist for stress.

The program in which he has been accepted is a one year, intensive and rigorous field based program. The first semester the student needs to carry 18 hours of coursework besides teach half time in an urban, culturally diverse high school. James wants to do the first semester in two semesters instead of one, but the courses are so integrated that it is difficult for faculty to separate them into an appropriate half-time load. The student will have to sit out one semester, because the student teaching is not offered in the fall semester, and the courses to be taken with student teaching also are only offered in the spring. However, the student also needs to be full time in order to get financial assistance.

The student's financial needs are his own concern. He cannot expect a reduced load of work with full credit. A program does not have to accommodate its rigor or intensity, although in this case they created a two year plan.

- Sarah is a 32-year old anthropologist who is making a career change to elementary education because of a bad back. She doesn't want to go to student services for an accommodation request because she is afraid that her insurance company will have to be notified and it may affect her benefits.

Sarah can't sit on the floor or small chairs for reading in the morning, and has asked that she be exempt from doing playground duty at recess. The principal and cooperating teacher believe that she should be removed from the student teaching experience because she can't fulfill the duties of an elementary teacher.

The teacher can be allowed a regular chair for classes. Sitting on the floor is not a professional requirement although perhaps a

BEST COPY AVAILABLE

common practice. Exemption is not an accommodation. Student teachers must be responsible for fulfilling the duties expected of them.

Kincaid (1996) describes additional accommodations which can be made for individuals who have psychological needs.

- Jennifer was enrolled in a beginning computer class. Due to her schizophrenia she had difficulty focusing in class. Her thoughts would wander from the teacher and she would feel lost from the class. Because of this she would continually interrupt the class to ask the teacher questions. She was beginning to feel as if her teacher and classmates were angry at her for the disruption.

Jennifer's teacher allowed her to bring in a tape recorder to tape the class lectures. She was also assigned a "computer buddy", a classmate who would sit next to her during class to point out what they were focusing on if Jennifer became lost. The teacher also made herself available to Jennifer each week at a certain time for questions. Jennifer also increased her time in the computer lab at the school.

- Lisa was in her second semester at a community college. She had been taking 3 classes and was near completion of the semester when her Multiple Personality Disorder began to effect her school work. Until this point Lisa had been an exemplary student, a teachers favorite with a grade point average of 4.0. It became impossible for Lisa to go to her classes. Lisa did not want to jeopardize her grade point average, nor did she have the money to take the classes over.

Because of her exemplary record Lisa's teacher all agree to give her an incomplete rather than having her withdraw or failing her. This enabled Lisa to complete the coursework over the next semester. It would not effect her grade point average an she would not have to pay for the classes again.

- Joe was attending a major metropolitan university. The parking lot for the university was quite a distance from the building where his classes took place. Because of an anxiety disorder Joe would find himself experiencing panic attacks walking from his car to the classroom building. Once he arrived in the building it would take him several minutes to calm himself and he was generally very flustered during his class. It got to the point when Joe was contemplating quitting school.

Joe approached the Students with Disabilities Office and was able to get a parking pass which allowed him to park closer to the building where his classes were held. Because of this he felt safer in the environment and no longer experienced the panic attacks on his way to class.

The following semester Joe had classes on the first floor of the building and the third floor of the building. In between classes the hallway and staircase were extremely crowded. Joe found himself experiencing panic attacks on his way up the stair case wanting to run down and out of the building.

Joe approached the Student's with Disabilities Office again. Since Joe's class was located near an elevator they were able to give him a key to the elevator. He would take the elevator to the third floor allowing him to avoid the crowded staircase and diminishing his anxiety.

BEST COPY AVAILABLE

Need For Clear Policy And A Reasonable Set Of Entrance Competencies.

Teacher education programs and partnering school districts must look at how conditions such as neurological injury, stress, back problems, hearing impairments, arthritis, and a host of other conditions affect the requirements of the profession at both preservice and inservice levels. The discussion about what is reasonable and fundamental seems to be at the central core of policy development for teacher education programs. The confusion comes with what "reasonable" means. Ignoring the problem will only serve to expose programs to great legal and financial liability.

A clear set of questions is emerging. Program requirements, interview processes, classroom practices, field experience responsibilities are just a few areas where clear policy and sets of competencies are required. The Office of Civil Rights has found that the institution must be reasonable in stating that all students have to be able to observe various procedures related to their profession.

> *It is becoming more evident that those professions whose college-preparation includes professional training, internships, or field experiences must establish clear sets of knowledge, procedures, and skills that are a vital prerequisites to the profession.*

School districts must be clear in their expectations and accommodations of disabled employees, and be sure that they use the same policy guidelines for preservice teachers. Administrators, university supervisors and cooperating teachers must assure that their evaluations do not discriminate based on handicaps. The question

becomes how and when are the requirements such that policy must be developed to protect and provide the best possible learning experience for the students in the K-12 classrooms and yet still be required to provide a means for preservice teachers to pass the course?

Some elementary and high schools are questioning whether appropriate screening is being done before teachers come to the schools. Such things as criminal checks, history of child abuse, TB or HIV testing are but a few of the growing concerns. Ohio State Schools of Cosmetology and T.H.E. Barber School, 7 NDLR ¶ 95, Case No. 05-94-2158 (OCR Region V) (1995) ruled that it is a violation to inquire whether applicants had a physical or mental condition which could interfere with graduating from the school or prevent the applicant from being employed after graduation, but took no issue with a questionnaire after admission that ensure that students could safely work with the public. (Kincaid, 1996). Doe v. University of Maryland Medical System Corp., 50 F.3d 1261, 6 NDLR ¶ 266 (4th Cir. 1995) upheld a university's decision to terminate the employment of a neurosurgical resident who is a carrier of (HIV) when he refused to accept the hospital offer of alternative residencies in non-surgical field. The court held that the physician is not an "otherwise qualified individual" with a disability under Section 504 and Title II of ADA as he poses a significant risk to patients that cannot be eliminated by reasonable accommodation. In spite of the fact that the risk of transmission is slight, and there is to date not one documented case of an HIV positive surgeon transmitting the virus to, nor does the Center for Disease Control take the position that HIV positive health care workers should be barred from performing most surgical procedures, the court deferred to the university hospital's reasoned judgmentas to what procedures the resident could safely perform, which necessarily resulted in eliminating most of the doctor's duties (Kincaid, 1996). Whether or not

BEST COPY AVAILABLE

Shirley J. Williams, Ed. D., Director of Teacher Education
swilliams@stfrancis.edu
University of St. Francis, Joliet, Illinois
1-815-740-3377

such a stand would be taken with teachers working with students is yet to be determined.

Many teacher education candidates have difficulty on tests such as the National Teachers Exam (NTE) or state basic skills tests that are required for entrance into programs. Sometimes elementary education teachers will complain about subject matter requirements in math and science that they will never be required to understand in order to teach. In the case of Bennett College (NC), Case No. 04-95-2065 (OCR Region IV) (1995) the college's refusal to substitute a math requirement despite the urging of the advisor because the student had a disability was upheld. The institutions requires all bachelor degree candidates to take the course and pass a math competency exam, neither of which the college has ever waived (Kincaid, 1996).

Reducing Liability.

An institution must look at its self-evaluation, or begin a thorough evaluation of access to educational programs and services by people with all types of disabilities. Lawsuits involving ADA and Section 504 have involved a variety of issues including building access, bias in housing, admissions, and employment practices. If the institution's current plan appears to only meet bare minimum requirements, include an addendum stating that the plan is under review and does not represent the institution's conclusion that all of the changes cited are necessary to bring the campus into compliance.

Keep campus and local groups aware of what the campus is doing and why. Involve them in setting priorities. Good faith efforts are usually recognized if they are combined with budget commitments. Most individuals understand the difficulty of obtaining money. Those colleges most likely sued are those that have done nothing to comply with the law and are not even trying to determine how to meet the needs of the disabled (Duston & Provan, 1995).

Precautions

Insure that procedures for people to request accommodations or their disabilities, as well as internal grievance procedure under ADA and Section 504 are well established and publicized. Faculty should have statements on their syllabi to remind students that such assistance is available in college just as it had been previously. Examples of such statements include the following:

- "(The name of institutions) will provide access or other reasonable assistance for students with recognized disabilities. If you have a recognized disability and need an accommodation please see me (the professor) or (name of representative or counselor) of Student Services (or other designated office) as early in the semester as possible."
- If you believe that you may be in need of special services or accommodations in your coursework, please contact (name of Counselor or Professor) in the Education Department at 815-740-3376, or stop in S313 for an appointment.

Another precaution may be a document that is attached to the syllabus which students must read and sign. Wording such as the following could be included:

Notification of Class Requirements, Accommodation Needs and Expected Behaviors and Criminal Records

As a student in the teacher education program I understand the following:

- If I believe that I have a disability or condition which requires a special accommodation by the college or university, I will contact the professor or appropriate campus counselor/advisor to see that my need is put in writing.

- I understand that I have a responsibility to make sure that my health or behaviors will not endanger the students whom I teach and are in keeping with the conduct code of the institutions with which I am associated.

- I understand that there are laws regarding convictions of felonies and misdemeanors that may prevent individuals from being employed in schools. Knowing this I understand that if I have been convicted of certain crimes it may prevent my placement, certification or employment.

- The syllabus is a document which outlines the expectations for class, and I have read the syllabus and understand the requirements of this class.

_____

Signature of Student

BEST COPY AVAIL

Shirley J. Williams, Ed. D., Director of Teacher Education
swilliams@stfrancis.edu
University of St. Francis, Joliet, Illinois
1-815-740-3377

Gilbert and Steffey (1996) reported on a survey concerning the essential functions of teaching and the rights of individuals with learning disabilities to become teachers. The major issues of the study were: (1) the essential functions of a teacher; (2) whether minimum competency is being tested for candidates seeking certification to teach; (3) whether accommodations should be provided on certification tests for teachers; and (4) if so, which accommodations should be provided for teachers with learning disabilities. The 127 respondents were primarily educators in rural and small cities in Illinois. Several conclusions were suggested by the data. First, members of the education community must establish the essential functions of teaching in order to set standards for competency in teaching and be sure that the standards are followed. Second, teacher educators and administrators are unable to deny admission to teacher programs to individuals who may not be entirely qualified to teach but "try hard," and it is difficult for them to admit that, in spite of their best efforts, they may not be able to help an individual become a competent teacher. Third, although ADA is aimed at giving equal opportunity to individuals with disabilities, it does not support placing an unqualified individual with a learning disability in a classroom.

There is a need to develop professional models that identify the components and standards necessary for student success. It is the professional and ethical responsibility to ensure that teacher education faculties graduate only qualified new teachers based on the essential functions of teachers.

BEST COPY AVAILABLE

Shirley J. Williams, Ed. D., Director of Teacher Education
swilliams@stfrancis.edu

University of St. Francis, Joliet, Illinois
1-815-740-3377

References

(1991, September 18). Disabilities law will force improvements. The Chronicle of Higher Education, p. B4.

(1992, November 4, 1992). More freshmen report having a disability. The Chronicle of Higher Education, p. A27.

Duston, R. L., & Provan, R. (1995, June 2, 2995). The perils of ignoring the Americans with Disabilities Act. The Chronicle of Higher Education, p. B1.

Gilbert, S. L., & Steffey, B. J. (1996). Rights versus Responsibilities: Traiing Individuals with Learning Disabilities in the Teaching Proession (ERIC No. 143). Summer Workshop Meeting of the Association of Teacher Educators.

Hopko, D. (1992). Drugs and Alcohol. In U. S. Department of Education.

Kincaid, J. M. (1994). The ADA and section 504: Legal mechanisms for achieving effective supported education. *Community Support Network News, 10*(2).

Kincaid, J. M. (1996). Dancing with wolves: ADA compliance in the '90's (Conference report No.)

Senate, E. T. S. U. (1998). Policy - Procedure for students with disabilities. InEast Tennessee State University Faculty Handbook: East Tennessee State University, pp. 5.12).

Shirley J. Williams, Ed. D., Director of Teacher Education
swilliams@stfrancis.edu

University of St. Francis, Joliet, Illinois
1-815-740-3377